No. _____

In The

Supreme Court of the United States

GREGORY R. SWECKER, PRO SE,

Petitioner,

vs.

MIKE JOHANNS, SECRETARY OF THE UNITED STATES DEPARTMENT OF AGRICULTURE,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

In 1974 Congress enacted the Equal Credit Opportunity Act and the Act makes it unlawful for any creditor, including the Respondent, to discriminate against any applicant, including the Petitioner. 15 U.S.C. § 1691(a). In 1983, unbeknownst to the public, the United States Department of Agriculture (USDA) dismantled its Civil Rights Department. In 1997, in the Congressional Report "A Time to Act" the USDA admitted that it had engaged in a nationwide "pattern and practice" of discrimination in loan funding against the small, minority and disadvantaged limited resource farmers of this nation. As a result of the dismantling of the USDA's Civil Rights Department and an admission of a pattern and practice of discrimination in loan funding, on October 21, 1998 Congress enacted the **Statute of Limitations 741 Waiver Legislation** to obtain relief for all farmers who were subjected to unlawful discrimination and who had filed an "eligible complaint" of discrimination before July 1, 1997. This case presents the direct question whether and under what circumstances is a complaint an "eligible complaint" of discrimination triggering 741 relief or whether Petitioner, under strict scrutiny analysis, can be held to a higher burden of proof, reverse discrimination and disparate treatment because of Petitioner's race?

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PRIOR OPINIONS IN THE CASE

The following opinions in other Courts in this case are attached and identified as follows:

Appendix A – The Opinion of the United States Court of Appeals for the Eighth Circuit, Affirming the District Court's Dismissal of Petitioner's Action, filed January 29, 2007.

Appendix B – Judgment of Court of Appeals for the Eighth Circuit, filed January 29, 2007.

Appendix C – Memorandum Opinion and Order of the United States District Court for the Southern District of Iowa, filed June 14, 2005.

Appendix D – The Memorandum Opinion and Order on Motion to Alter or Amend Judgment from the United States District Court for the Southern District of Iowa, filed July 28, 2005.

Appendix E – Mandate from Court of Appeals for the Eighth Circuit, dated April 5, 2007.

Appendix F – Denial of En Banc Review of the United States Court of Appeals for the Eighth Circuit, filed March 29, 2007.

JURISDICTION

A request for en banc rehearing of the opinion of the United States Court of Appeals for the Eighth Circuit affirming the decision of the United States District Court for the Southern District of Iowa dismissing Petitioner's action, was denied on March 29, 2007. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED IN THIS REVIEW

United States Constitution, Article III, Sec. 2, states, in pertinent part: The Judicial Power shall extend to all Cases in Law and Equity, arising under this Constitution, the Laws of the United States, . . . ; to all Controversies to which the United States shall be a Party;. . . .

STATEMENT OF THE CASE

Petitioner is a small, disadvantaged limited resource Caucasian farmer who farmed and attempted to farm and was subjected by the Respondent to unlawful discrimination. Petitioner filed three separate complaints of discrimination with USDA before July 1, 1997 that have never been investigated. Petitioner's actions were subsequently dismissed by the Federal District Court for the Southern District of Iowa and Eighth Circuit Court of Appeals.

While Petitioner's case has never been investigated, there is substantial direct evidence in the record of the USDA's "pattern and practice" of discrimination and direct evidence in the record documenting the timely filing of Petitioner's "eligible complaints" of discrimination filed with USDA officials in attendance at a public meeting that was documented in a local newspaper.

Petitioner, the very person the statute is designed to protect and who has been injured, is now being subjected to reverse discrimination and a higher burden of proof that an "eligible complaint" of discrimination had been filed pursuant to the Statute of Limitations 741 Waiver in violation of Petitioner's Constitutional Rights to Equal Protection of the

Law of the Fifth and Fourteenth Amendments to the United States Constitution because of Petitioners race.

The District Court for the Southern District of Iowa and Eighth Circuit Court of Appeals dismissed Petitioner's action without any investigation of Petitioner's Civil Rights complaints of discrimination even after the Directors of USDA's Office of Civil Rights, Ms. Rosalind Grey and Dr. Jeremy Wu, acknowledged on two separate occasions that Petitioner had filed "eligible complaints" and determined that Petitioner was entitled to mediation, conciliation or negotiation. Petitioner's discrimination complaints were dismissed without any investigation in direct violation of the Administrative Procedures Act, 5 U.S.C. § 706.

REASONS FOR GRANTING THE PETITION.

This Court has established jurisprudence regarding the issue of standing and discrimination, describing the requirements a Petitioner must meet to confer standing. One of these requirements is that the Petitioner's injury must be apparent as in this instant case of direct discrimination and that material points of fact and law are in conflict with other circuits involving the same issues. Such conflicts are against public policy and substantially affect rules of national application and national uniformity and Constitutional Equal Protection of the Law considerations under the Fifth and Fourteenth Amendments. First, this Court enunciated what has become the definitive statement of the elements of standing:

> First, the plaintiff must have suffered an "injury in fact" – an invasion of a legally protected interest which is (a) concrete and particularized, and

> (b) "actual and imminent", not "conjectural" or "hypothetical," .... Second, there must be a causal connection between the injury and the conduct complained of – the injury has to be "fairly ... trace[able] to the challenged action of the defendant, and not ... the result [of] the independent action of some third party not before the court." ... Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."

Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 2136 (1992).

I. THE DECISION BELOW CREATES A CONFLICT WITHIN THE CIRCUITS ON THE IMPORTANT ISSUE OF THE DEFINITION OF THE FILING OF AN "ELIGIBLE COMPLAINT" OF DISCRIMINATION FOR THE PURPOSES OF THE STATUTE OF LIMITATIONS 741 WAIVER AND RELIEF.

There is a conflict between the Eighth Circuit Court of Appeals in Petitioner's case and other circuits regarding the definition of what constitutes the filing of an "eligible complaint" of discrimination thus triggering the Statute of Limitations 741 relief. The District Court for the Southern District of Iowa as confirmed by the Eighth Circuit dismissed Petitioner's complaint on the basis that there was no direct evidence that a complaint had been filed in writing to the Civil Rights Department.

But the courts in *Keepseagle*, *Love* and *Pigford*, all class action lawsuits representing minority farmers, have all held and denied the Respondent's motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) under these same grounds. *Pigford v. Glickman*, 206 F.3d 1212, 1214 (D.C. Cir. 2000).

In Judge Robertson's opinion he wrote:

> Congress' extension of the statute of limitations for complaints of discrimination in the administration of USDA loan programs "at any time" between 1981 and 1996 was a waiver of sovereign immunity. Fortunately the language of 741 is plain. It does not require "written complaints" (although the reference to filing them strongly suggests Congress' expectation that complaints would be made formally and in writing.) It does not mention the Office of Civil Rights (in view of the legislative accord that gave rise to 741). Thus a complaint filed **anywhere** in the USDA before July 1, 1997 would qualify for 741 extended statute of limitations if it charged discrimination in the administration of loan programs with the USDA.

2001 U.S. Dist. Lexis 25201, *14-15.

A court faced with a Motion to Dismiss a pro se complaint alleging violations of Civil Rights must read the complainant's allegations expansively and take them as true for purposes of deciding whether they state a claim. *Haines v. Kerner*, 404 U.S. 510 (1972) See also *White v. Bloom*, 621 F.2d 876 (8th Cir. 1980)

At the core of this case is the Statute of Limitations 741 Waiver.

On October 21, 1998 Congress enacted the Statute of Limitations 741 Waiver legislation which states that:

> (a) To the extent permitted by the Constitution any civil action to obtain relief with respect to the Discrimination alleged in an eligible complaint if commenced not later than 2 years after the date of the enactment of this

act shall not be barred by any Statute of Limitations.

(b) The complainant may, in lieu of filing a civil action, seek a determination on the merits of the eligible complaint by the Department of Agriculture if such complaint was filed not later than 2 years after the date of enactment of this Act (October 21, 1998).

As set forth by Congress, an eligible complaint means a non-employment related complaint that was filed with the Department of Agriculture before July 1, 1997 and alleges discrimination at any time during the period beginning on January 1, 1981 and ending December 31, 1996 in violation of the Equal Credit Opportunity Act 15 U.S.C. § 1691 in administering a farm ownership loan, farm operating loan or emergency loan. ECOA creates a private right of action against any creditor who violates its antidiscrimination provisions. § 1691(e)

As set forth by Congress the basis for the Statute of Limitations Waiver were farmers who (1) farmed or attempted to farm after January 1, 1982; (2) applied to the Respondent during that time period for participation in a federal farm credit or benefit program; and (3) in the course of his or her participation in such program believes that he or she was subjected by Respondent to

(i) Denial of credit or benefits to which he or she was entitled.

(ii) Substantial and highly prejudicial delays in receiving credit or benefits to which he was entitled.

(iii) Provision of credit or benefits that were substantially less than the credit or benefits to

which he was entitled and were otherwise substantially inadequate.

(iv) A requirement that he provide co-signers and guarantors beyond what was reasonably necessary.

(v) A failure of fair or timely process of his complaint of discrimination and other unfair treatment and/or

(vi) Other abusive discriminatory, retaliatory, dilatory and otherwise unlawful practices and prejudicial mistreatment.

As in all cases of statutory Construction the court's task is to interpret the words of the statute in light of the purpose Congress sought to serve. *Chapman v. Houston Welfare Rights Organization*, 41 U.S. 600, 608 (1979). As set forth by Congress the basis for the Statute of Limitations 741 Waiver **were farmers** who (1) farmed or attempted to farm after January 1, 1982; (2) applied to the Respondent during that time period for participation in a federal farm credit or benefit program; (3) and in the course of his or her participation in such program believes that he or she was subjected by Respondent to unlawful discrimination. As set forth by Congress the purpose of the Statute of Limitations 741 legislation was to obtain relief for **all farmers** who were subjected to unlawful discrimination by the Respondent. Congress sought this relief for all farmers based upon the Respondent's admission that it had engaged in a nationwide "pattern and practice" of discrimination against the minority, small and disadvantaged limited resource family farmers of this nation including the Petitioner during this time period.

II. THE DECISION BELOW PRESENTS AN IMPORTANT QUESTION IF PETITIONER CAN BE HELD TO A HIGHER BURDEN OF PROOF BASED UPON RACE IN THE DEFINITION OF THE FILING AN ELIGIBLE CIVIL RIGHTS COMPLAINT.

As the U.S. Supreme Court has held when faced with classes of individuals or types of discrimination that fall outside the core prohibitions of anti-discrimination statutes, the courts have consistently construed those statutes to include comparable evils within their coverage. Congress for instance, focused almost entirely on the problems of discrimination against African-Americans when it enacted Title VII of the Civil Rights Act of 1964. See e.g. *Steelworker v. Weber*, 443 U.S. 193, 202-203 (1979). But that narrow focus could not possibly justify a construction of the statute that excluded Hispanic-Americans or Asian Americans from its protection or as the U.S. Supreme Court would later decide Caucasians. *McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273, 279-280 (1976).

In the context of the Statute of Limitations 741 legislation the plain language utilized by Congress meeting the definition of eligible complaints **were farmers** who (1) farmed or attempted to farm after January 1, 1982; (2) applied to the Respondent during that time period for participation in a federal farm credit or benefit program; and (3) in the course of his or her participation in such program believes that he or she was subjected by Respondent to unlawful discrimination.

Petitioner Greg Swecker meets Congressional intent as **a farmer** who farmed or attempted to farm after January 1, 1982 and was subjected by the Respondent to unlawful discrimination and timely filed "eligible complaints" of

discrimination. Where the statutory language employed by Congress is clear the text controls and no further inquiry is permitted. *Estate of Cowart v. Nichols Drilling Co.*, 505 U.S. 469, 475 (1992).

1. As set forth by Congress under the Statute of Limitations 741 Waiver, Petitioner Greg Swecker is a small, limited resource (Caucasian) farmer who farmed or attempted to farm in Greene County, Iowa and is not an employee of the United States Department of Agriculture.

2. As set forth by Congress under the Statute of Limitations 741 Waiver, Petitioner Greg Swecker applied to the Respondent during the time period beginning on January 1, 1981 and ending on December 31, 1996. Petitioner applied to the Respondent on February 26, 1990 for a feeder pig loan to participate in a federal farm credit program.

3. As set forth by Congress under the Statute of Limitations 741 Waiver, during the course of Petitioner's participation in such program Petitioner was subjected by Respondent to denial of credit and benefits to which Petitioner was entitled. As the prima facie evidence in the record confirms, on April 2, 1990 Respondent denied Petitioner's loan request for feeder pigs stating that Respondent does not finance feeder pig operations and will not advance funds for the needed feed from Sweck's Inc. a retail feed business owned by the Petitioner's family.

Upon appeal, The National Appeals Division overturned the Respondent's decision on July 31, 1990, finding Respondent's denial of Petitioner's loans request was unjustified and not supported by the facts or by the regulations and that Respondent did an excessive amount of investigation to find reason to determine Petitioner's

ineligibility. Even though the National Appeals Division overturned the appeal, no loan was made to the Petitioner and Petitioner suffered severe economic harm that started Petitioner on a downhill economic slide to which Petitioner has never recovered.

(i). As a result of Respondent's denial of Petitioner's loan proceeds, Petitioner was subjected by the Respondent to 15 distinct acts of discrimination as 15 direct feeder pigs loans were made by the Repondent to 15 similarly-situated farmers in Greene County, Iowa in violation of Petitioner's rights under ECOA 15 U.S.C. § 1691.

(ii). As set forth by Congress under the Statute of Limitations 741 Waiver, Petitioner was subjected to substantial and prejudicial delays in receiving credit to which Petitioner was entitled. Petitioner was eligible for and entitled to receive a feeder pig loan on January 17, 1992 but Respondent intentionally delayed Petitioner's loan 141 days until June 8, 1992. In 1993, Petitioner was eligible for and entitled to receive a feeder pig loan on January 13, 1993 but Respondent again intentionally delayed Petitioner's loan 157 days till June 21, 1993.

(iii). As set forth by Congress under the Statute of Limitations 741 Waiver, Petitioner was subjected to provision of credit that was substantially less than the credit to which Petitioner was entitled and was substantially inadequate. Because Petitioner's loans were unjustly denied in 1990 and delayed 141 days in 1992, and 157 days in 1993, Petitioner received substantially less than the credit to which Petitioner was eligible for and entitled to in 1990, 1991, 1992 and 1993 and as a result suffered severe economic harm.

(iv). Inapplicable.

(v). As set forth by Congress under the Statute of Limitations 741 Waiver, Petitioner was subjected to Failure of Fair or Timely Process of Petitioner's Complaints of Discrimination. Respondent failed to investigate Petitioner's Complaints of Discrimination filed with USDA on August 16, 1990, August 10, 1995 and January 27, 1997.

(vi). As set forth by Congress under the Statute of Limitations 741 Waiver, Petitioner has been subjected to other abusive, discriminatory, retaliatory, dilatory and otherwise unlawful practices and prejudicial mistreatment.

Under the Consolidated Farm and Rural Development Act 7 U.S.C. § 1921 Respondent is authorized to make loans to farmers who cannot obtain credit from commercial institutions. A Farm ownership loan assists farmers in buying or improving farm property 7 C.F.R. § 1943.2 and a farm operating loan provides credit to help farmers run their farms 7 C.F.R. § 1941.2. Until 1999 decisions to approve or deny application for benefits were made by local County Committee members and USDA staff.

Unbeknownst to the Petitioner during this relevant time period, the County Committee member determining the Petitioner's loan application was Ms. Debra Cooklin. Ms. Debra Cooklin was directly involved in a Conflict of Interest with the Petitioner regarding farm ground owned by the Petitioner's family members. As a direct result of unjustly and unlawfully denying Petitioner's loan, Ms. Debra Cooklin benefited from said discriminatory acts against the Petitioner by gaining financial interest in the farm ground which had been formerly farmed by the Petitioner. County Committee member Ms. Debra Cooklin

took a direct part in unjustly and unlawfully denying Petitioner's loan and in so doing received a financial benefit from said acts of discrimination in violation of Petitioner's rights under ECOA 15 U.S.C. § 1691.

At the very heart of the reason for Congress's enactment of the Statute of Limitations 741 legislation was the system of control by the County Committee members in arbitrarily determining who got loans and who did not. As the declaration of the Director of the Office of Civil Rights Ms. Rosalind Grey stated before Congress, the system of control by a few County Committee members has been used to perpetuate and expand the farms of many county committee members and their families at the expense of the disfavored farmers. While the Respondent has disbanded with the County Committee system in determining loan funding, the victims of this practice such as Petitioner are still suffering injury in fact from the repercussions of this practice.

A party invoking federal jurisdiction under the Statute of Limitations 741 waiver of sovereign immunity must allege in their pleadings the facts essential to show that they filed "eligible complaints" within the prescribed time frame.

As direct evidence, Petitioner's August 16, 1990 complaint meets the pleadings requirement that an "eligible complaint" was filed within the prescribed time frame triggering the Statute of Limitations 741 relief. Petitioner complained of discrimination orally with USDA officials in attendance at a public meeting which was documented in a public newspaper. The District Court and Eighth Circuit Court of Appeals overlooked and misapprehended this case that Petitioner's complaint was required

to be in writing holding Petitioner to a much higher Burden of Proof than that afforded minority farmers in *Keepseagle*, *Love* and *Pigford*. Congress did not intend to close the courthouse door to the Petitioner as a victim of a nationwide pattern and practice of discrimination and abuse through reverse racial discrimination.

Petitioner timely filed within 180 days after being subjected to discrimination under ECOA an oral complaint of discrimination directly to USDA officials at a public meeting, almost seven years before the Statute of Limitations deadline of July 1, 1997. Respondent maintains that USDA regulations require written complaints. However, USDA's own practice and policy dictated that USDA employees receiving oral complaints of discrimination were required to fill out an intake form for the complainant's signature and Petitioner never received such intake form.

On August 16, 1990 USDA personnel Gary Ludington received the oral complaint from the Petitioner in addition to taking Petitioner's written document stating it would be forwarded to the proper officials. Section 741 was a remedial remedy passed because USDA's Office of Civil Rights was disbanded and failed to act on complaints filed either orally or written for years unbeknownst to the public. As a result farmers including Petitioner who filed complaints of discrimination never received a response. In fact given the widespread egregious conduct reported in the Congressional Reports there is no reason to believe that USDA followed its own policies.

Congress did not intend to deny Petitioner as a victim of USDA's discrimination and abuse who justifiably relied on the USDA complaint process. The Office of Civil Rights

was dismantled and complaints that were filed both orally and in writing by the Petitioner were never processed, investigated or forwarded to the appropriate agencies' office for conciliation. As a result this system was functionally non-existent for well over a decade. At the time Section 741 was drafted and continuing to the present, USDA has accepted oral complaints. See

> How to file a USDA Program discrimination complaint. USDA Office of Civil Rights at http://www.usda.gov/cr/OCR/Program.htm (July 29, 2004). Describing the way to make a program discrimination complaint by telephone or by letter; USDA-Farm Service Agency Handbook par. 253 at 9-2 (1997). Employees receiving written or verbal complaints must forward the complaint to the appropriate office. USDA practices both before and after the passage of Section 741 have been to accept oral complaints of discrimination.

And a system that was functionally non-existent for over a decade persisted to ignore continuing complaints of discrimination by the Petitioner.

According to the Respondent's own policy if the oral complaint was received by telephone, Respondent claims the employee would mail the intake form to the complainant with instructions to sign and return the form and indicating that the complaint would be considered filed on the date of the oral complaint.

Yet, the evidence in the record proves to the contrary as the affidavit by Mr. Paul Mahoney, a representative from Farmers Legal Action Group provides. As the affidavit of Mr. Paul Mahoney documents, Respondent was given fair notice that Petitioner was complaining of discrimination directly to USDA officials via a telephone

conference call and a tape recording was made on August 10, 1995. In violation of direct policy, Respondent did not comply and send Petitioner any documentation nor follow up with complaint forms mailed to the Petitioner or Mr. Paul Mahoney.

Considering that ECOA does not specify that complaints must be written, and that waivers of sovereign immunity are not to be unduly narrowed, and in light of USDA policy of accepting oral and telephone complaints during this time period it is reversible error that the District Court and Eighth Circuit Court of Appeals dismissed Petitioner's eligible oral and telephone complaints filed on August 16, 1990 and August 10, 1995 under the Statute of Limitations 741 Wavier. Such dismissal violates Petitioner's Constitutional right to Equal Protection of the Law under the FIfth and Fourteenth Amendment to the United States Constitutions. Courts must neither enlarge such waivers beyond what the statutory language requires, *Library of Congress v. Shaw*, 478 U.S. 310, 318 (1986) nor narrow them by unduly restrictive interpretation, *Bowen v. City of New York*, 476 U.S. 467, 479 (1986).

Courts must generously construe allegations in the complaints in Petitioner's favor when the complaint meets with particularity a level sufficient to meet the liberal notice pleading standards of the federal rules. *Grogan v. Gen. Maint. Serv.*, 763 F.2d 444, 449 (D.C. Cir. 1985). A complaint must be read broadly to determine whether it provides Respondent with fair notice. When considering dismissal, the court will accept as true all allegations in the Petitioner's pleadings and give Petitioner the benefit of all reasonable inferences. See *Stewart v. Evans*, 275 F.3d 1126, 1132 (D.C. Cir. 2002).

Under the Statute of Limitations 741 Waiver as set forth by Congress, the Director of Civil Rights was delegated with the authority to make a determination as to whether prohibited discrimination occurred and the corrective actions required to resolve the program complaints. Once again the direct evidence in the record provides that both of the Civil Rights Directors Dr. Jeremy Wu and Ms. Rosalind Grey had determined that Petitioner had filed an "eligible complaint" on January 27, 1997 triggering the Statute of Limitations 741 relief.

Contrary to Respondent's allegations, Petitioner did not misread the Federal Register of April 23, 1996 regarding the use of ***familial status as a protected basis for All USDA Department conducted programs and ECOA***. The direct evidence in the federal register states that **familial status** and marital status were added to the list of protected basis for USDA conducted programs since these classes are also included in the Fair Housing Act (Marital Status) and ECOA (Marital and **Familial Status**).

Just as everyone is charged with knowledge of the U.S. Statutes at Large, Congress has provided that the appearance of rule and regulation in the Federal Register gives legal notice of their contents. *Hunt Const. Group Inc. v. U.S.*, 281 F.3d 1369, 1373 (Fed. Cir. 2002). It is not unfair to charge Respondent with construction notice of the pertinent regulation published in the Federal Register and the legal contents that familial status was a protected basis for purposes of all USDA conducted programs and ECOA. The Eighth Circuit Court of Appeals and District Court decision that familial status was not a protected basis is reversible error. An abuse of discretion occurs if the court bases its ruling on an erroneous view of the law

or clearly erroneous assessment of the evidence. *Cotter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990)

The Eighth Circuit Court of Appeals and District Court for the Southern District of Iowa ignore Congressional intent and the Directors of Civil Rights determinations that Petitioner had filed "eligible complaint" complaints of discrimination in direct violation of Petitioner's Constitutional Rights to Equal Protection of the Law under the Fifth and Fourteenth Amendment. Petitioner was subjected to prohibited discrimination pursuant to 741 and timely filed eligible complaints and entitled to relief under the Federal Statute enacted by congress to end discrimination for all farmers who were subjected to unlawful discrimination.

As such Petitioner has Constitutional standing for violation of the Equal Protection clause which itself reaches intentional discrimination. Intentional discrimination entails proving that the government has treated similarly-situated groups differently on the basis of race. Such intentional discrimination is inherent in Petitioner's denial of any relief as a victim of a nationwide pattern and practice of discrimination and abuse even though the Respondent has admitted to discrimination against the small and disadvantaged limited resource farmers of this nation who for all practical purposes were similarly-situated to the minority farmers that have very little proof of their claims but have been granted relief.

> Under the terms of *Pigford*, 206 F.3d at 1215-16, the court noted that "most of the members of the Class in Pigford have little documentation or proof of their claims."

> As the Honorable U.S. Supreme Court Justice Scalia has said government can never have a compelling reason for making race preference. Government can never have a compelling interest in discriminating on the basis of race in order to make up for past racial discrimination in the opposite direction.

And as the court said in *Pigford*, putting a monetary value on the damage done to someone who has experienced discrimination at the hands of the government obviously is not an easy manner. But the damage done to Petitioner in denying relief through reverse discrimination when Petitioner repeatedly filed "eligible complaints" under a federal statute enacted by Congress to remedy discrimination is a manifest injustice. This court has held all racial classification imposed by the federal government must satisfy strict scrutiny analysis by which the court determines if the classification is narrowly tailored to serve a compelling interest. In this instant case, there is no compelling interest to hold Petitioner to a higher burden of proof based upon race that Petitioner filed an "eligible complaint" of discrimination than that imposed upon minority farmers in other circuits.

As the evidence in the record provides Petitioner filed both oral and written complaints of discrimination in the administration of loan programs directly with USDA before July 1, 1997 that would qualify and give rise to 741's extended Statute of Limitations. Respectfully speaking, there simply was no statutory requirement under Section 741 that Petitioner's August 16, 1990 complaint had to be a written complaint and no basis to ignore the Director of Civil Rights Ms. Rosalind Grey and Dr. Jeremy Wu determination that Petitioner had filed

eligible complaints of discrimination triggering the Statute of Limitations 741. Petitioner is entitled to relief – to be free from discrimination, monetary relief and to all other appropriate relief that Congress intended.

CONCLUSION

For the forgoing reasons this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX A

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 05-3721

Gregory R. Swecker, Appellant, v. Mike Johanns, in his official capacity as the Secretary of the United States Department of Agriculture, Appellee.	* * * * * * * * * * *	Appeal from the United States District Court for the Southern District of Iowa. [UNPUBLISHED]

Submitted: January 24, 2007
Filed: January 29, 2007

Before RILEY, MAGILL, and MELLOY, Circuit Judges.

PER CURIAM.

Gregory Swecker appeals from the district court's[1] order granting defendant's motion to dismiss under Federal Rule of Civil Procedure 12(b)(1). Following careful

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[1] The Honorable Robert W. Pratt, Chief Judge, United States District Court for the Southern District of Iowa.

de novo review, *see Green Acres Enters., Inc. v. United Sates*, 418 F.3d 852, 856 (8th Cir. 2005), we agree that dismissal of Swecker's complaint was proper for the reasons stated by the district court. Accordingly, we affirm *See* 8th Cir. R. 47B.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE EIGHT CIRCUIT

No: 05-3721

Gregory R. Swecker,

Appellant

v.

Mike Johanns, in his official capacity as the Secretary of the United States Department of Agriculture

Appellee

Appeal from U.S. District Court for the
Southern District of Iowa – Des Moines
(4:04-cv-90415)

JUDGMENT

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

January 29, 2007

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

GREG SWECKER, Plaintiff, v. ANN M. VENEMAN, in her official capacity as the Secretary of the United States Department of Agriculture, Defendant.	* 4:04-cv-90415 * * * * * MEMORANDUM * OPINION AND ORDER * * * (Filed Jun. 14, 2005)

Before the Court is Defendant's Motion to Dismiss Plaintiff's Complaint under Fed. R. Civ. P. 12(b)(1). Clerk's No. 5. Plaintiff claims that Defendant discriminated against him relation to the approval and processing of loans from the years 1988 to 1993, in violation of the Equal Credit Opportunity Act ("ECOA"). *See* 15 U.S.C. § 1691 et. seq. Plaintiff also alleges claims arising under: 42 U.S.C. § 1981; 42 U.S.C. § 1983; 42 U.S.C. § 1985; 42 U.S.C. § 1986; Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et. seq.; and the Administrative Procedures Act ("APA"), 5 U.S.C. § 701 et. seq., for violations of his civil rights protected by the Fifth and Fourteenth Amendments.[1] Plaintiff complains both about the individual handling of his loan requests to the Farmers Home Administration ("FmHA") and

[1] Plaintiff's Complaint with attachments is over one-hundred pages long. The Complaint states eleven counts against the Defendant, however, all claims fall under the listed constitutional provisions and statutes.

also of racial discrimination by the United States Department of Agriculture ("USDA") because certain African-American farmers were provided relief through the *Pigford v. Glickman* class action settlement that was not provided to Plaintiff, a Caucasian farmer.[2] *See Pigford v. Glickman,* 185 F.R.D. 82 (D.D.C. 1999). Plaintiff filed his Complaint on August 2, 2004, over ten years after the loan processing events of which he complains. Defendant argues that all of Plaintiff's claims must be dismissed because they fall outside the relevant statute of limitation during which this Court may assert jurisdiction. Defendant filed a brief in support of its Motion, to which Plaintiff made a timely Resistance. Defendant also filed a Reply brief to Plaintiff's Resistance and Plaintiff filed a Reply to Defendant's Reply. The matter is fully submitted.

I. BACKGROUND

Plaintiff, Greg Swecker ("Swecker"), is a rural farmer who resides in Greene County, Iowa. Plaintiff brought suit against Defendant Ann E. Veneman, in her official capacity as the Secretary of the USDA.[3] Plaintiff's allegations against the USDA begin with a loan request made in 1988, which was not approved. Following the denial Swecker wrote a letter to the USDA on January 27, 1997, stating that denial of the loan request was improper as he was

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[2] The FmHA was a credit agency within the USDA that was authorized, as its successor the Farm Service Agency ("FSA") is now, to make loans to farmers who are generally unable to obtain credit from commercial sources. Def's Br. at 2 (citing Consolidated Farm and Rural Development Act, 7 U.S.C. § 1922, 1941).

[3] Mike Johanns is the current Secretary of the United States Department of Agriculture.

"never previously late in making [his] annual payment or repaying the annual operating note in full." Def's Ex. A. Plaintiff appealed the loan denial and was successful. Swecker's appeal alleged that one of the County Supervisors who was involved in the loan approval process had a personal conflict of interest and denied Swecker's loan in order to receive personal financial gain. Part of the relief granted following the successful appeal was that Plaintiff's request was sent to another county. Once Plaintiff was moved to another county Swecker states: "We had no problems with the new County Supervisor and timely applied for an operating line of credit in January of each year." Def.'s Ex. A. However, this same letter explained that despite the loan approval, there were delays at the state level and "each year more than 6 months of production had elapsed," before the funds were received, which caused delinquencies. *Id.*

Plaintiff's Complaint also discusses other loan requests that were made to the USDA and alleges various processing errors made by the USDA. The last loan application mentioned in the Complaint for a loan request dated January 13, 1993, which Plaintiff complains was not received until June 21, 1993, in violation of a federal regulation which states that the agency must act within sixty days of receiving a loan request. Plaintiff took his complaints to the USDA, which filed its final determination, holding that Swecer's [sic] ECOA were time barred, on February 19, 2004. Defendant moves for dismissal in this Court on the same basis.

Swecker also brings an additional argument that was not brought before the USDA, namely that the class-action settlement in favor of African-American farmers in *Pigford v. Veneman,* violated his constitutional rights. Swecker

argues: "Only race distinguishes Plaintiff from those African-American farmers that the Defendant has elected to favor from Plaintiff who has been left to fend for himself and continues to be abused." Pl.'s Reply at 5. Swecker alleges that the settlement in favor of African-American farmers violates the ECOA and the Equal Protection Clause of the Fifth and Fourteenth Amendments of the United States Constitution.

II. DISCUSSION

Defendant's Motion to Dismiss argues that this Court is without jurisdiction to entertain any of Plaintiff's claims because they all fall outside of the applicable statutes of limitations. Federal courts are courts of limited jurisdiction and "the requirement that jurisdiction be established as a threshold matter springs from the nature and limits of the judicial power of the United States and is inflexible and without exception." *Godfrey v. Publitzer Pub. Co.,* 161 F.3d 1137, 1141 (8th Cir. 1998). One aspect of jurisdiction is that the plaintiff's complaint is timely, and does not fall outside the statute of limitations set forth by Congress.

A. *Plaintiff's ECOA Claims*

The ECOA provides a cause of action for credit applicants who are discriminated against "with respect to any aspect of a credit transaction: 1) on the basis of race, color, religion, national origin, sex or marital status or age; 2) because all or part of the applicant's income derives from any public assistance program; or 3) because the applicant has in good faith exercised any right under the Consumer Credit Act" 15 U.S.C. § 1691(a). The ECOA also provides that "no action shall be brought later than two years from

the date of the occurrence of the violation." 15 U.S.C. § 1691e(f). Plaintiff's claims clearly fall outside of this two-year limitation period, as the last credit application that Plaintiff discusses in his Complaint was made on January 13, 1993.[4]

Congress, however, has provided that in limited circumstances, the two-year statute of limitations for claims arising under the ECOA may be waived. This waiver provision is commonly referred to as "Section 741," and was passed in part, in response to mismanagement and a backlog of discrimination complaints at the USDA. *See* Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, § 741, enacted in Division A, section 101(a) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (Oct. 21, 1998) (codified at 7 U.S.C. § 2279 note). Section 741 provides, in relevant part:

> (a) To the extent permitted by the Constitution, any civil action to obtain relief with respect to the discrimination alleged in an eligible complaint, if commenced not later than 2 years after the date of the enactment of this Act, shall not be barred by any statute of limitation.
>
> (b) The complainant may, in lieu of filing a civil action, seek a determination on the merits of the

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[4] Plaintiff's claims under the ECOA in regards to the *Pigford* settlement are also time-barred. The consent decree was affirmed by the District of Columbia Court of Appeals in 2000. Accordingly, this Complaint filed in 2004 falls outside the two-year statute of limitations. *See Pigford v. Venemen*, 340 U.S. App. 420 (2000).

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> eligible complaint by the Department of Agriculture if such complaint was filed not later than 2 years after the date of enactment of this Act. . . .
>
> (c) Notwithstanding subsections (a) and (b), if an eligible claim is denied administratively, the claimant shall have at least 180 days to commence a cause of action in a Federal court of competent jurisdiction seeking a review of such denial. . . .
>
> (e) As used in this section, the term 'eligible complaint' means a nonemployment related complaint that was filed with the Department of Agriculture before July 1, 1997 and alleges discrimination at any time during the period beginning on January 1, 1981 and ending December 31, 1996 –
>
> > (1) in violation fo [sic] the Equal Credit Opportunity Act (15 U.S.C. 1691 et. Seq. [sic]) in administering
> >
> > > (A) a farm ownership, farm operating, or emergency loan funded from the Agricultural Credit Insurance Program Account; or. . . .
>
> (g) The standard of review for judicial review of an agency action with respect to an eligible complaint is de novo review. . . .

7 U.S.C. § 2279 note.

Plaintiff proceeded under Section (b) of the waiver provision and sought a determination by the USDA on the merits of his complaint. The USDA filed its Final Determination on February 19, 2004, whereby it "dismissed [the] complaint as ineligible for consideration on the basis that it is time-barred." Compl. at 27. Specifically, the

USDA found that Plaintiff's complaint did not fit the requirements necessary to be deemed an "eligible complaint," as set forth in Section 741 subsection (e). Plaintiff now seeks review of the USDA's finding that he did not file an "eligible complaint." As set forth in Section 741 subsection (g), this Court's standard of review "with respect to an eligible complaint is de novo review. . . . " Since the determination of whether Plaintiff filed an "eligible complaint" controls whether or not this Court has subject matter jurisdiction over his claims, "[t]he plaintiff bears the burden of pleading the facts upon which the court's jurisdiction depends, and 'if his allegations of jurisdictional facts are challenged by his adversary in any appropriate manner, he must support them by competent proof.'" *Mients v. United States,* 50 Fed. Cl. 665, 670 (Ct. Fed. Cl. 2001) (quoting *McNutt v. Gen. Motors Acceptance Corp.,* 298 U.S. 178, 189 (1936)).

USDA Final Determination on February 19, 2004 held that Plaintiff did not file an eligible complaint of discrimination by July 1, 1997 as Congress mandated in the Section 741 statute of limitations waiver. Swecker, therefore, was not eligible to receive compensation under the ECOA. Def.'s Ex. A. Section 741 defines what is an "eligible complaint." In subsection (e) it states: "the term 'eligible complaint' means a non-employment related complaint that was filed with the Department of Agriculture before July 1, 1997 and alleges discrimination at any time during the period beginning on January 1, 1981 and ending December 31, 1996 . . . in violation of the Equal Credit Opportunity Act (15 U.S.C. § 1691 et. seq.)." 7 U.S.C. § 2279 note.

This Court must strictly adhere to the July 1, 1997 deadline. "Filing deadlines, like statutes of limitations,

necessarily operate harshly and arbitrarily with respect to individuals who fall just on the other side of them, but if the concept of a filing deadline is to have any content, the deadline must be enforced." *U.S. v. Locke,* 471 U.S. 84, 101 (1985). However, the examination of Plaintiff's correspondence and complaints to the USDA is not as simple as the Defendant alleges. Defendant argues that "the Rules of Federal Procedure, which allow a party to amend a complaint, are not applicable to a statutory provision which sets forth clear and specific deadlines for certain actions." Def.'s Reply at 3. The Court must disagree. The Federal Rules of Civil Procedure, which allow for amendments and in some situations for an amendment to "relate back" to the original filing date, do apply to statutory provisions such as statutes of limitations and the Court finds no reason why it would not apply to a statutory filing deadline. *See* Fed. R. Civ. P. 15.

Swecker is a pro se litigant and just as a Court "must liberally construe [the] pro se complaint," so must this Court liberally construe the agency discrimination complaint. *Smith v. St. Bernards Reg'l Med. Ctr.,* 19 F.3d 1254, 1255 (8th Cir. 1994) (citing *Haines v. Kerner,* 404 U.S. 519 (1972)); *see also Rodriguez v. Weprin,* 116 F.3d 62, 65 (2d Cir. 1997) ("Although 'less stringent standards' apply where, as here, a litigant is pro se, *see Robles v. Coughlin,* 725 F.2d 12, 15 (2d Cir. 1983) (per curiam), dismissal is nevertheless appropriate where 'it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief' ") (citing *Conley v. Gibson,* 355 U.S. 41, 45-46 (1957)). Plaintiff argues that he filed not one, but four eligible complaints with the USDA on the following dates: August 16, 1990; August 10, 1995; January 27, 1997; and March 24, 1998. The Court must

look at all four of the proposed "filings" to determine whether any or all may be considered an eligible complaint.

1. August 16, 1990.

Plaintiff alleges that he " . . . has provided the court with clear and convincing evidence that an eligible written civil rights complaint was filed at a public meeting held on August 16, 1990 with USDA employees in attendance." Pl.'s Reply at 1. The Court has reviewed Plaintiff's extensive pleadings and found no evidence to support that a written civil rights complaint was filed on August 16, 1990. There is evidence that a public meeting was held that evening, and that Swecker signed a petition along with others in attendance. Voicing concern over general matters, however, does not meet the eligibility criteria of a filed written complaint. In fact, included in Plaintiff's attachments to his Complaint is a letter from the USDA asking that Swecker identify specific concerns that he had. The letter states:

> Following the August 16, 1990 meeting in Glidden, I received a letter from Hugh Espey asking me to investigate specific concerns of people who signed a list that was passed around at the meeting. I need for you to identify the specific concerns you have about the FmHA and the manner in which FmHA has conducted business with you.

Compl. at 82. There is not, however, any evidence that Swecker did follow up as the letter requested. Accordingly, presence at a community meeting cannot be said to satisfy the filing requirements of Section 741.

2. August 10, 1995.

Plaintiff also argues that he filed an eligible complaint on August 10, 1995. Plaintiff attempts to evidence this by attaching an affidavit by Paul Mahoney, Swecker's previous attorney, which states: "Although I made the allegation of discrimination on behalf of the Swecker's, no complaint was filed by the agency with civil rights." Compl. at 85. Again, this shows no evidence of any actual filing of a complaint by Plaintiff, which would initiate application of Section 741. The statutory waiver provides that a complaint must actually be filed with the USDA, not merely raised in discussions. To hold, as Plaintiff requests, that Section 741 applies to anyone who ever called and complained to the USDA, but did not follow up by filing a formal complaint would defeat the clear language of the waiver provision.

3. January 27, 1997.

The next date offered by the Plaintiff of an eligible filing is January 27, 1997, and is evidenced by a written complaint letter that was sent to the USDA. The letter to the USDA, dated January 27, 1997, begins with the line: "I am writing in regard to Civil Rights violations. . . . " Def's Ex. A. Swecker described the violations as follows:

> It is my belief that the Federal Land Bank and the Farmers Home Administration were working in collusion to force us off this leased land without having a just cause. Also, one of the county committee members was directly involved in an operation in which there was a personal conflict of interest. . . . Since, the evidence was so overwhelming in this case that the County Supervisor had

> denied our operating loan . . . they moved us to another county. We had no problems with the new County Supervisor and timely applied for an operating line of credit in January of each year. . . . By mid June of each year we were still waiting for the funds to be approved at the state level. Each year more than 6 months of production had elapsed, which in turn caused our delinquencies.

Id. There are no other facts alleged in the letter that could be construed as a complaint of discrimination.

The USDA responded to Plaintiff's January letter and construed it as being a complaint alleging familial discrimination. Defendant concedes this in its Brief in Support of its Motion. However, Defendant argues that the familial discrimination is not covered by the ECOA and therefore, the January 27, 1997 letter cannot be an eligible complaint. The Court agrees. The ECOA clearly lists the types of discrimination that are covered by the Act. *See* 15 U.S.C. § 1691(a). Excluded from the list is familial discrimination. While the USDA does address discrimination on the basis of familial status through other statutes and regulations, it simply is not a covered basis under the ECOA, and therefore, does not fit into the Section 741 statute of limitations waiver. Even a liberal construction of this letter does not put the Government on notice that Plaintiff is claiming discrimination on a protected basis. "It is the facts well pleaded, not the theory of recovery or legal conclusions, that state a cause of action and put a party on notice." *Hopkins v. Saunders,* 199 F.3d 968, 973 (8th Cir. 1999). The facts pled in the January letter allege that the County Supervisor had a personal conflict of interest, not that Swecker was discriminated against on the basis of "race, color, religion, national origin, sex or

marital status or age." 15 U.S.C. § 1591. However, Plaintiff later filed an "amendment" to the January letter concerning the same denial of a loan request, but asserting discrimination under an ECOA protected basis. The question then, is whether the "amendment" may "relate back" to the January filing date.

4. March 24, 1998.

The first time that Plaintiff mentions facts alleging discrimination on the basis of a protected basis is March 24, 1998, where discrimination based upon race was alleged. According to the Final Determination of the USDA, Swecker's correspondence on March 24, 1998 stated: "'The Program Complaint Adjudication Department cannot accept jurisdiction with a basis of familia [sic] status, so therefore we are changing our basis to race and color.'" Compl. at 28. Despite Plaintiff's arguments to the contrary, this "amendment" to his original complaint cannot relate back to January 27, 1997.

Federal Rule of Civil Procedure 15 sets forth the requirements necessary for an amendment to a complaint to "relate back" to the original filing date. "An amendment of a pleading relates back to the date of the original pleading when . . . (2) the claim or defense asserted in the amended pleadings arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading. . . ." Fed. R. Civ. P. 15(c)(2). Since the January letter stated no facts which would put the Defendant on notice of any sort of racial discrimination claims, the March 24, 1998 amendment cannot relate back to the original filing date.

The Eighth Circuit in *Maegdlin v. Int'l Assoc. of Machinists and Aerospace Workers, District 949*, 309 F.3d 1051 (8th Cir. 2002), explained what is necessary for an amendment to arise "out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading." In that case, a plaintiff had originally pled a claim of "breach of duty of fair representation" on the basis of gender. *Maegdlin,* 309 F.3d at 1052. The plaintiff's amended complaint "deleted the breach of duty account, and substituted in its place four counts . . . pursuant to Title VII of the Civil Rights Act. . . . " *Id.* The Eighth Circuit held that the Title VII claims for gender discrimination "related back" to the original complaint, but the Title VII claims for retaliation did not. This was because "the rationale behind 15(c)(2) is that 'a party who has been notified of litigation concerning a particular occurrence has been given all the notice that statutes of limitations were intended to provide.'" *Id.* (quoting *Baldwin Cty. Welcome Ctr. v. Brown*, 466 U.S. 147, 149-50 n. 3 (1984)). Since the original complaint in *Maegdlin* had stated, "for discrimination on the basis of gender," the defendant was on notice of the facts regarding gender discrimination.

The defendant in *Maegdlin* was not put on notice, however, of plaintiff's retaliation claims because "his original complaint contains no suggestion of retaliatory conduct. . . ." *Id.* at 1053. Likewise, in the present case, Plaintiff's original complaint letter dated January 27, 1997, contains no suggestion of racial discrimination.[5] Therefore, the January letter cannot be said to have put

[5] [Text missing in original.]

the Defendant on notice of any ECOA claims founded upon a protected basis. Accordingly, Plaintiff has failed to show that he filed an "eligible complaint," before July 1, 1997, and Section 741 does not apply to his Complaint filed in this Court. Plaintiff's ECOA claims must, therefore, be dismissed as untimely.

This is not to trivialize the struggle that small farmers in today's society must endure. Nor does the Court's determination hold that the USDA has made no mistakes in its handling of discrimination complaints, which the very conduct necessitated the adoption of Section 741. However, in this case, Plaintiff's Complaint does not fit into the statutory waiver definition of "eligible complaint," and any waiver of sovereign immunity by the Government must be strictly construed in favor of the Government. Plaintiff has simply never alleged facts prior to July 1, 1997 to put the USDA on notice of discrimination on the basis of a protected status. Factual allegations that a County Committee board member had a financial interest in not granting a farming loan, while objectionable, is not a protected basis under the ECOA. Plaintiff's Complaint as to his claims under the ECOA are hereby DISMISSED. The Court now turns to the remainder of Plaintiff's federal claims.

B. *The Remaining Civil Rights Claims*

The Court likewise may not entertain the remainder of Plaintiff's federal claims. The Court has no jurisdiction for Plaintiff's claims under the Administrative Procedure Act, 5 U.S.C. 701 et. seq. ("APA") because the APA is available only for claims "for which there is no other adequate remedy in a court." 5 U.S.C. § 704. The final

agency action upon which the Plaintiff complains is the Final Determination of the USDA issued in February 2004. As there is an adequate remedy provided by the ECOA, the APA is not available. That Plaintiff's ECOA claims are time-barred does not alter the fact that the ECOA provides an adequate remedy within the meaning of 5 U.S.C. § 704. *See Mitchell v. United States,* 930 F.2d 893, 897 (1991) (holding that action in Claims Court was adequate remedy even though Plaintiff's action may have been time-barred). There are no other final actions of the USDA before the Court.

Plaintiff also listed an expansive array of civil rights claims in his Complaint: "Civil action asserting claims arising under 42 U.S.C. 1981, 1983, 1985, 1986 for violations of Constitutional and Civil Rights, including those contained in the First Amendment, Equal Protection Clause and Due Process Clause of the Fourteenth and Fifth Amendment and for violations under Title VII of the Civil Rights Act." Compl. at 1.[6] All the listed civil rights claims must be dismissed as untimely. "The law to be applied in adjudicating civil rights claims shall be in 'conformity with the laws of the United States, so far as such laws are suitable.'" *Wilson v. Garcia,* 471 U.S. 261, 268 (1985) (quoting 42 U.S.C. § 1988)). In regards to the applicable "length of law limitations," that period is to be governed by state law. *Wilson,* 471 U.S. at 269. Since the federal claims do not contain an explicit limitations period, the statutory period is governed by the "most analogous

[6] Although Plaintiff lists Title VII of the Civil Rights Act, since he is not an employee of the United States government, the Court assumes he intended to write Title VI of the Civil Rights Act. *See* 42 U.S.C. § 2000e et. seq; 42 U.S.C. § 2000d et. seq.

state statutes." *Franks v. Ross*, 313 F.3d 184, 194 (4th Cir. 2002).

The most analogous state statute is the limitations period for personal injury claims. *See Dautremont v. Broadlawns Hosp.*, 827 F.2d 291 (8th Cir. 1997) (applying Iowa's two year personal injury statute of limitations to plaintiff's § 1983 claim); *see also Franks*, 313 F.3d at 194 ("'the personal nature of the right against discrimination justifies applying the state personal injury limitations period.'") (quoting *Jersey Heights Neighborhood Assoc. v. Glendening*, 174 F.3d 180, 187 (4th Cir. 1999)). In Iowa, the statute of limitations for personal injury claims is two years. Iowa Code Ann. § 614.1.2 (Supp. 1987). Accordingly, Plaintiff's allegations of civil rights violations in connection with the processing of his loan requests, the last one having been filed in 1993, fall outside the two year limitations period. Likewise, Plaintiff's claims for civil rights violations arising out of the *Pigford* class settlement are time barred, since the consent decree was affirmed on appeal in 2000 and Plaintiff did not bring the present action until 2004.[7] *See Pigford*, 340 U.S. App. D.C. 420 (2000).

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[7] Although, Plaintiff's civil rights claims in regards to the *Pigford* lawsuit are dismissed as untimely, the claims could be dismissed on other grounds as well, as discussed in a similar suit brought by Caucasian farmers in the Southern District of Mississippi. *See Green v. Veneman*, 159 F. Supp. 2d 360, 370 (S.D. Miss. 2001) ("In sum, plaintiffs' arguments in this case completely ignore the fact that the issue in *Pigford* was not just mistreatment or abuse by the USDA of American farmers, but rather mistreatment and abuse of African American farmers because of their race. . . . The substantive relief which *Pigford* consent decree provides is available only to class members who prove race discrimination, and consequently, the relief made available to successful *Pigford* class members does not work any race-based injury

(Continued on following page)

IV. CONCLUSION

This Court is without jurisdiction to examine the merits of any of Plaintiff's various claims brought against the USDA. Plaintiff has not demonstrated that he filed an "eligible complaint" to trigger application of the Section 741 statute of limitations waiver. Therefore, the ECOA's normal two year statute of limitation must be applied, and accordingly Plaintiff's ECOA claims are time barred. Likewise, Plaintiff's remaining civil rights claims contained in his Complaint filed on August 2, 2004, fall well beyond the applicable two year statute of limitations. Finally, as the APA does not provide a cause of action for Plaintiff's claims against the USDA as Congress provided an adequate remedy through the ECOA. Plaintiff has not argued that there is any justifiable reason for his delay in bringing the present action. Accordingly, this Court finds no reason to ignore the Congressional statutory time limits. For the reasons stated herein, Defendant's Motion to Dismiss (Clerk's No. 5) is GRANTED. Defendant's previously filed Motion to Dismiss (Clerk's No. 4) is DENIED as moot.

IT IS SO ORDERED.

Dated this ___ 14th ___ day of June, 2005.

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to the plaintiffs herein. . . . It is not race alone that distinguishes the plaintiffs in this case from the individuals to whom the USDA has agreed via the *Pigford* consent decree to provide remedial credit opportunities, but rather it is the fact that those individuals are African American and that they made a timely complaint of race discrimination to the USDA and that they are able to prove that the USDA denied them a benefit because of their race.")

/s/ Robert W. Pratt
ROBERT W. PRATT
U.S. DISTRICT JUDGE

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

GREG SWECKER, Plaintiff, v. ANN M. VENEMAN, in her official capacity as the Secretary of the United States Department of Agriculture, Defendant.	* 4:04-cv-90415 * * * * * MEMORANDUM * OPINION AND ORDER * * * (Filed Jul. 28, 2005)

Before the Court is Plaintiff's Motion to Alter or Amend Judgment pursuant to Federal Rule of Civil Procedure 59(e). Clerk's No. 13. On June 14, 2005, this Court granted the Defendant's Motion to Dismiss Plaintiff's claim for lack of subject matter jurisdiction. This Court found that Plaintiff failed to meet the filing requirements to trigger application of Section 741's waiver of ECOA's two-year statute of limitation, and accordingly, Plaintiff's claims against the Defendant were untimely.[1]

[1] Congress provided that in limited circumstances, the two-year statute of limitations for claims arising under the ECOA may be waived. This waiver provision is commonly referred to as "Section 741," and was passed in part, in response to mismanagement and a backlog of discrimination complaints at the USDA. *See* Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, § 741, enacted in Division A, section 101(a) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (Oct. 21, 1998) (codified at 7 U.S.C. § 2279 note).

Plaintiff asserts that there has been a "manifest error of law and fact and respectfully asks the court to reconsider its findings." Pl.'s Br. at 1. Defendant submitted a resistance to the motion to which Plaintiff replied. The matter is fully submitted.[2]

"Federal Rule of Civil Procedure 59(e) was adopted to clarify a district court's power to correct its own mistakes in the time period immediately following entry of judgment" *Innovative Home Health Care, Inc. v. P.T.-O.T. Assoc. of the Black Hills,* 141 F.3d 1284, 1286 (8th Cir. 1998) (citing *Norman v. Arkansas Dep't of Educ.,* 79 F.3d 748, 750 (8th Cir.1996)). "Rule 59(e) motions serve a limited function of correcting 'manifest errors of law or fact or to present newly discovered evidence.'" *Id.* (quoting *Hagerman v. Yukon Energy Corp.,* 839 F.2d 407, 413 (8th Cir. 1988) (additional citations omitted)). "Such motions cannot be used to introduce new evidence, tender new legal theories, or raise arguments which could have been offered or raised prior to entry of judgment." *Id.* Thus, a Rule 59(e) motion may be granted to incorporate an intervening change in the law, to reflect new evidence previously unavailable, or to correct clear error or prevent manifest injustice. *See Servants of the Paraclete v. John Does,* 204 F.3d 1005, 1012 (10th Cir. 2000); *EEOC v. Lockheed Martin Corp.,* 116 F.3d 110, 112 (4th Cir. 1997).

Plaintiff's Complaint was dismissed because this Court lacks subject matter jurisdiction over Plaintiff's

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[2] One of Defendant's original arguments in resistance was that Plaintiff's Motion was not timely filed. *See* Fed. R. Civ. P. 59(e) (setting for a 10-day deadline in which to file a Rule 59(e) motion). It has come to light that Plaintiff's Rule 59(e) Motion was timely filed and the Court will consider Plaintiff's motion on its merits.

claims. Federal courts are courts of limited jurisdiction and "the requirement that jurisdiction be established as a threshold matter springs from the nature and limits of the judicial power of the United States and is inflexible and without exception." *Godfrey v. Publitzer Pub. Co.,* 161 F.3d 1137, 1141 (8th Cir. 1998). One aspect of jurisdiction is that the plaintiff's complaint must be timely, and must not fall outside the statute of limitations set forth by Congress. The ECOA provides that "no action shall be brought later than two years from the date of the occurrence of the violation." 15 U.S.C. § 1691e(f). Plaintiff's claims clearly fall outside of this two-year limitation period, as the last credit application that Plaintiff discusses in his Complaint was made on January 13, 1993.

Congress, however, did provide a waiver of this two-year statute of limitation pursuant to "Section 741." In order to trigger "Section 741," Plaintiff needed to present evidence that he filed an "eligible complaint," before July 1, 1997. For the reasons set forth in this Court's previous Order, Plaintiff failed establish the filing of an "eligible complaint." In his Brief in support of his Motion to Alter or Amend Judgment, Plaintiff simply reiterated the same factual arguments he had argued previously. Contrary to Plaintiff's belief; a photo is not evidence of a filing, a misunderstanding is not evidence of a filing, and Plaintiff's letter of January 27, 1997 did not allege any facts to show discrimination under an ECOA protected basis. "Filing deadlines, like statutes of limitations, necessarily operate harshly and arbitrarily with respect to individuals who fall just on the other side of them, but if the concept of a filing deadline is to have any content, the deadline must be enforced" *U.S. v. Locke,* 471 U.S. 84, 101 (1985).

The Court has carefully reviewed the Plaintiff's Motion to Alter or Amend Judgment, but cannot identify any new evidence or relevant law that the Court had not previously considered. Accordingly, the Court is not compelled to alter its Order of June 14, 2005. Moreover, although not specifically argued, Defendant has failed to offer any evidence which would persuade the Court that he is entitled to relief from operation of the judgment pursuant to Rule 60(b).[3] Accordingly, Defendant's Motion to Alter or Amend Judgment (Clerk's No. 13) is DENIED.

IT IS SO ORDERED.

Dated this 27th day of July, 2005.

/s/ Robert W. Pratt
ROBERT W. PRATT
U.S. DISTRICT JUDGE

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[3] Federal Rule of Civil Procedure 60(b) provides:

> Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

Fed. R. Civ. P. 60(b). A rule 60(b) motion "is not a vehicle for simple reargument on the merits." *Broadway v. Norris*, 193 F.3d 987, 989 (8th Cir. 1999).

APPENDIX E

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No: 05-3721

Gregory R. Swecker,

Appellant

v.

Mike Johanns, in his official capacity as the Secretary of the United States Department of Agriculture,

Appellee

Appeal from U.S. District Court for the Southern District of Iowa – Des Moines (4:04-cv-90415)

MANDATE

In accordance with the opinion and judgment of 01/29/2007, and pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), the formal mandate is hereby issued in the above-styled matter.

April 05, 2007

Clerk, U.S. Court of Appeals, Eighth Circuit

APPENDIX F

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No: 05-3721

Gregory R. Swecker,

Appellant

v.

Mike Johanns, in his official capacity as the Secretary of the United States Department of Agriculture,

Appellee

Appeal from U.S. District Court for the Southern District of Iowa – Des Moines (4:04-cv-90415)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied. Judge Colloton did not participate in the consideration or decision of this matter.

March 29, 2007

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

APPENDIX G

[LOGO] United States Department of Agriculture | Office of the Secretary | Office of Civil Rights | Washington, D.C. 20250

RE: 970127

Mr. Greg Swecker
1891 170th Street
Dana, Iowa 50064

Dear Mr. Swecker:

Thank you for your January 27, 1997, complaint in which you expressed concerns about being denied an operating loan from January 1987 to the present, and receiving falsified information. You allege discrimination on the basis of familial status. The program about which you complained is conducted by the Farm Service Agency (FSA). This office is responsible for processing discrimination complaints concerning programs conducted or assisted by the Department of Agriculture.

We will be processing your complaint and have initiated a Preliminary Inquiry into your allegations. FSA will be contacting you to discuss the case. Please be prepared to indicate witnesses and why they are relevant. If you wish to obtain a representative, please do so as soon as possible. If you have a representative please indicate this information on the attached data sheet. If you obtain a representative later, please let us know.

We hope to complete the processing of your complaint in 180 days (but it may take longer). FSA may attempt to resolve your complaint through a negotiated resolution. This step may be called a conciliation, negotiation or mediation, and usually involves an objective review of the facts to provide you a fuller, clearer understanding of the

issue(s). In some cases an adjustment or compromise may be worked out. If this can be achieved, you can close your case with a written agreement and subsequent withdrawal.

Please review and verify the enclosed complaint data sheet. Ensure that your address, telephone number and other information are correctly stated. You may include any additional comments on the back. Sign the sheet and return it to us in the enclosed envelope within the next seven days. If you have not previously signed a complaint, we need this complaint data signed to process the case.

For your information, we have also enclosed a flow chart, and a fact sheet that explain the way our office will handle your complaint. If you have any questions, please contact Vi Hall on (202) 720-5964.

Sincerely,

/s/ Jeremy Wu
Dr. Jeremy Wu
Deputy Director
Office of Civil Rights

Enclosures

(1) fact sheet (2) data sheet & envelope (3) flow chart

APPENDIX H

[LOGO]

Jun 3, 1999

Mr. Greg Swecker
1891 170th Street
Dana, Iowa 50064

RE: Your Civil Rights Complaint, SOL Docket Number: 1082

Dear Mr. Swecker:

The Office of Civil Rights (CR) has reviewed your civil rights complaints against the Farm Service Agency. Your first complaint's case number was 1054. CR closed that complaint on March 16, 1998, because the complaint was not jurisdictional. Later, you filed a new complaint, which was considered a "re-filing" of the previous complaint. The case number assigned to the new case was 1567. The only difference between both complaints was the basis that you alleged. In view of this fact, CR considered the second complaint as an amendment of the initial complaint.

An issue of timeliness affects your second complaint. CR has determined that your complaint was not eligible to be processed under the procedures established within the Program Investigations Division (PID). However, your complaints are eligible for the processes established by Congress that are discussed below. PID will close your file; however, a new file will be opened for you in the Statute of Limitations Special Project.

The Office of Civil Rights through the Statute of Limitations Special Project is currently reviewing discrimination complaints filed with the Department of Agriculture (USDA) prior to July 1, 1997. We are doing this because,

during much of the 1980's and 1990's, administrative processes for review of program civil rights complaints did not function effectively, and the time period during which a complainant might seek remedies expired while cases were pending. To address this situation, the Secretary of Agriculture sought, and the Congress enacted, legislation to waive the applicable statute of limitations for such complaints for 2 years (until October 21, 2000). The intent of this legislation is to provide all eligible complainants with every opportunity to seek administrative or judicial resolution of their complaints.

You filed a discrimination complaint before July 1, 1997, which meets the eligibility requirements of the statute of limitations waiver (Section 741 of Public Law 105-277). Those requirements and other pertinent information are included in the regulation published in the Federal Register (copy enclosed).

We have given a docket number to your complaint, which is the number at the top of this letter, and it has been assigned to the Statute of Limitations Special Project for review. We also want to inform you of your rights and options under the statute of limitations waiver.

You have the right to take your case before an Administrative Law Judge; (3) to take your case to Federal Court; or (4) to pursue any two or more of the foregoing options described in greater detail in the enclosed Federal Register publication of the rules USDA has adopted to implement Section 741.

Those individuals (African-American Farmers) included in the Pigford and Brewington class action suit against USDA are being notified of their rights through the court-approved settlement process. Further information about

that process may be obtained by calling the Class Action Claims Facilitator at 1-800-646-2873.

If you have any questions, you may leave a message, including your name and telephone number, on the Statute of Limitations toll-free hotline: 1-800-543-1289, or you might want to contact a lawyer for assistance.

We look forward to resolving all eligible complaints in a fair and expeditious manner.

Sincerely,

/s/ Rosalind D. Gray
Rosalind D. Gray
Director
Office of Civil Rights

Enclosure

APPENDIX I

The Scranton Journal August 22, 1990 (Scranton, Iowa)

Farmers Home Roasted at Glidden

by Ken Robinson

[Pictures and Captions Omitted in Printing]

After facing a barrage of barbs, questions and pointed statements from a crowd of irritated and frustrated farmers and farm friends Thursday night at a meeting in Glidden, Gary Ludington, district director of the Farmers Home Administration from Atlantic, said, "I feel like the Lone Ranger."

The meeting was called by the Iowa Citizens for Community Improvement with the focus on the purported ills of the Farmers Home office in Jefferson that handles FmHA business for Greene and Carroll counties.

Father John Cain, pastor of the Catholic Church at Dow City and rural life director for the Sioux City diocese, chaired the meetings and handled questions from the crowd and guided many of them in Ludingtons way.

Father Cain started the meeting by saying we are meeting to not meet again but to get something done. However, after about an hour and one-half of discussion it was decided to hold another meeting with Robert Pim, state director of the Farmers Home Administration, in attendance. They thought September 12 might be a good date and Ludington was directed to handle the details.

Barbara Brewster, county supervisor in the Jefferson office, came in for most of the criticism from the 53 citizens who attended the meeting.

Father Cain said that he works in 24 counties in Northwest Iowa and the Jefferson office is by far the worst in the district. And, after listening to the horror stories told by several in attendance, it would not be difficult to believe that statement.

Charges of harassment and foot dragging were leveled at Brewster in addition to changing of figures on application forms.

Two farm women told their personal experiences with Brewster and FmHA office in Jefferson. Before the ladies spoke, Father Cain got an assurance from Ludington that there would be no retaliation against them from the FmHA.

Diane Boell of rural Carroll laid out her complaints on the following issues:

Unnecessary delays

Operating loans not made available until July and August.

Debt restructuring very slow.

Want to much collateral

Cash flow numbers tampered with

Harassment and retaliation

Uncooperative attitude of the staff

As she unfolded her story, Boell told of her personal experience with the FmHA office in Jefferson. She told of decisions being made one day and reversed the next.

In referring to Brewster, several times the phrase, "She plays God" was used.

Bev Swecker, who lives with her husband, Gene [sic], on a farm dear Dana, said "You don't have to be delinquent to have problems." She reported that they have been using the Farmers Home office for eight years. Swecker said that in 1989 they were denied because they were told they had no good credit. She said that in the middle of the planting season they were told to make no commitments. "We were told we were not trying and we were told our debt set aside for five years was expected to be paid in one year." "We were told "NO" on raising feeder pigs because we were supposed to have no managing ability. There is nothing in the rules saying we can't raise feeder pigs." "We met all our loan payments that year and paid income taxes." she concluded.

Swecker added that on June 19, 1990, they appealed Brewsters decision and on August 3 the state office overruled Brewster. According to Swecker, the state said, "Brewster didn't know what she was doing."

One of the borrowers reported that they had an emergency develop when their furnace failed to function. She said they were turned down for an emergency loan to get the furnace fixed. After a very frustrating day at the Jefferson FmHA office in a very dramatic statement, she said, "Barbara Brewster went home to a warm house and a nice supper while our family sat in the cold without food."

The philosophy of the Farmers Home Administration came in for some discussion and it was stated that a state official once told them, "Our business is to keep you on the farm." It is known as the borrowers place of last resort.

At one point in the meeting, Jack Tiffany, a Jefferson farmer discussed the recent FmHA election in which a

write-in candidate received 41 votes while the man whose name was on the ballot received five votes. The Farmers Home officials declared the man with five votes the winner. It seemed to be the consensus of the group that this was an unusual way to run an election.

Ludington was asked if he believed in the write-in system. He said their system is a little different but he said he "had no opinion" on the matter. The election was conducted according to Farmers Home rules.

Ludington was asked what he intends to do about the things he heard at the Thursday meeting and he replied, "If we can do something we will."

Then a more specific question was asked, "What are you going to do about Barbara Brewster?" The reply was, "I think she is doing a good job."

The retort was, "Then maybe both of you should go."

APPENDIX J

Iowa CCI

1607 East Grand Avenue
Des Moines, Iowa 50316
(515) 266-5213

IOWA CITIZENS FOR COMMUNITY IMPROVEMENT

August 21, 1990

Robert R. Pim
State Director
Farmers Home Administration
873 Federal Building
710 Walnut
Des Moines, Iowa 50309

Dear Mr. Pim:

Approximately 60 residents of Carroll County and Greene County met in Glidden last Thursday (August 16) with FmHA district director Gary Ludington to voice concerns and complaints about the Jefferson FmHA office. In particular, people brought up issues related to FmHA's farmer loan programs (direct & guaranteed), FmHA's rural housing loan program and the day-to-day management of the Jefferson office. The following concerns were mentioned most often by those in attendance:

1.) Unnecessary delays in the processing of loan applications.

2.) Difficulties in obtaining accurate information on borrower's rights and FmHA's rules/ regulations.

3.) Difficulties in reaching debt restructuring agreements.

4.) Excessive collateral demands.

5.) Cash flow numbers being changed by FmHA staff without farmer's knowledge.

6.) Rude treatment of borrowers and applicants by FmHA staff.

7.) The manner in which the most recent county committee election in Greene County was conducted.

8.) FmHA staff favoring some borrowers over others.

We feel that these issues are very important and that they need to be addressed by officials at the state FmHA office. Therefore, we invite you to come to Glidden in early September to meet with interested farmers and townspeople. This meeting would give all of us a chance to discuss the issues and begin working together to resolve them. The meeting would be sponsored by Iowa CCI and the Catholic Rural Life office of the Sioux City Diocese.

Please check your schedule and let us know which days are best for you. We look forward to hearing from you.

Sincerely,

/s/ Brad Wilson
Brad Wilson
Iowa CCI

/s/ Hugh Espey
Hugh Espey
Iowa CCI

cc: Gary Ludington
Father John Cain
Senator Tom Harkin
Senator Charles Grassley
Congressman Jim Lightfoot

APPENDIX K

[LOGO] United States Department of Agriculture | Farmers Home Administration | 1005 E. 7th, Suite 202 Atlantic, IA 50022 712/243-2107

August 20, 1990

Mr. and Mrs. Greg Swecker
RR 1
Dana, IA 50064

Dear Mr. and Mrs. Swecker:

Following the August 16, 1990 meeting in Glidden, I received a letter from Hugh Espey asking me to investigate specific concerns of people who signed a list that was passed around at the meeting. I need for you to identify the specific concerns you have about FmHA and the manner in which FmHA had conducted business with you.

Some people I talked to indicated they had signed the list to be included in the September 12 Farm Credit Day. Barbara and I will attend the Farm Credit Day and meet with you to discuss your concerns. If you have a concern that needs to be resolved earlier than September 12, please notify of the specific issue.

Sincerely,

/s/ Gary W. Ludington
GARY W. LUDINGTON
District Director

Farmers Home Administration is an equal opportunity lender. Complaints of discrimination should be

sent to the Secretary of Agriculture, Washington D.C. 20250

APPENDIX L

United States Department of Agriculture
Farmers Home Administration
1005 E. 7th, Suite 202
Atlantic, IA 50022
712/243-2107

August 22, 1990

Subject: Iowa CCI Meeting

To: State Director, FmHA
Des Moines, IA

On August 16, 1990, I attended an open meeting in Glidden which the Iowa CCI and the Catholic Rural Life had set for citizens in Greene and Carroll Counties. I have agreed that Barbara Brewster and I will meet with individual borrowers September 12 to review specific problems one on one.

Mr. Hugh Espey of ICCI and Father John Cain of Catholic Rural Life asked that I convey to you that they would like for you to meet them and area citizens in a meeting similar to the one held on August 16. I suggested they make their request directly to you, but I also agreed to send a letter to you expressing their desire.

GARY W. LUDINGTON
District Director

cc: Hugh Espey, Iowa CCI, 1607 East Grand Ave., Des Moines, IA 50316

Father John Cain, Catholic Rural Life, Box 317, St. Mary's Church, Dow City, IA 51528

Farmers Home Administration is an equal opportunity lender. Complaints of discrimination should be

sent to the Secretary of Agriculture, Washington D.C. 20250

APPENDIX M

AFFIDAVIT

STATE OF MINNESOTA COUNTY OF SWIFT

BEFORE ME on this 14th day of July, 2003, the undersigned Notary Public, in and for the State and County above written, by free will and deed did personally come and appear: PAUL DAVID MAHONEY, a resident of Swift County Minnesota and a person of the full age of majority, whose mailing address is 434 E. Schlieman Avenue, Appleton, Minnesota 56208, hereinafter referred to as "APPEARER" who acknowledges that Appearer has and does by these presents state that:

1. In 1995, I was affiliated with the Farmers Legal Action Group (FLAG).

2. On August 10, 1995 I was a party to a teleconference on a speaker phone that included Gregory Swecker and employees of the Farm Service Agency, Paul Volesky, Farm Program Specialist, (FPS) and Paul Fredrickson, District Director, (DD). Ms. Volesky stated that since a tape was being made of the teleconference all parties to the teleconference must be agreeable. All parties involved in this teleconference agreed to taping the conference.

3. The taped meeting pertained to FSA's issues with the Sweckers cash flow. District Director Paul Fredericksen ran the DALR$ program.

4. I recall that I disagreed with regulations that FSA used to support its actions against the Sweckers.

5. Due to FSA's misapplication of the regulations I made the statement that FSA was discriminating against the Sweckers.

6. Although I made the allegation of discrimination on behalf of the Sweckers, no complaint was filed by the agency with Civil Rights.

7. It was my understanding that FSA's employees were to report the complaint of discrimination to the Office of Civil Rights, which they did not do.

Further affiant sayeth not.

/s/ Paul David Mahoney
"APPEARER"

Sworn and subscribed to on the date herein first above written before me the undersigned Notary.

/s/ Wade R. Schmidt
NOTARY PUBLIC

[SEAL] WADE R. SCHMIDT
Notary Public —Minnesota
My Comm. Expires
Jan. 31, 2005

APPENDIX N

[LOGO] **U.S. Department of Justice**
Civil Rights Division

Coordination and Review Section – NYA
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

White House ID: #357540

Ms. Beverly Swecker
1891 170th Street
Dana, Iowa 50064

Dear Ms. Swecker:

This is in response to your letter to President George W. Bush, which has been received by the Coordination and Review Section of the Civil Rights Division, U.S. Department of Justice. We have considered carefully the information you have provided regarding the Office of Civil Rights and other officials of the U.S. Department of Agriculture (USDA), but the allegations you have raised do not appear to be within the jurisdiction of our office.

However, by the enclosed letter, we have referred this matter to the USDA's office of the Inspector General. A primary focus of the Office of the Inspector General's mission is to ensure the integrity of USDA's programs. While I do not know if the USDA is in a position to intervene in this matter, your information should be brought to its attention. If you have any questions, please contact that office.

We regret that we cannot be of further assistance to you. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,

/s/ Merrily A. Friedlander
Merrily A. Friedlander
Chief
Coordination and Review Section
Civil Rights Division

Enclosure

APPENDIX O

[LOGO] **U.S. Department of Justice**

Civil Rights Division

Coordination and Review Section – NYA
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

White House ID: #357540

Ms. Phyllis K. Fong
Inspector General
Office of the Inspector General
U.S. Department of Agriculture
1400 Independence Avenue, SW
Jamie L. Whitten Building, Room 9-E
Washington, DC 20250

Dear Inspector General Fong:

Enclosed for your review is correspondence forwarded to the Coordination and Review Section of the Civil Rights Division, U.S. Department of Justice from the White House on behalf of Ms. Beverly Swecker.

The matters raised by Ms. Swecker do not appear to be within the jurisdiction of our office. However, the issues raised may fall within the jurisdiction of your office, so we are referring this matter to you for appropriate disposition. Ms. Swecker has been notified of the referral, and we are enclosing a copy of our letter to Ms. Swecker, as well as Ms. Swecker's correspondence to the White House, in order to facilitate your review.

Thank you for your assistance in this matter.

Sincerely,

/s/ Merrily A. Friedlander
Merrily A. Friedlander
Chief
Coordination and Review Section
Civil Rights Division

Enclosures